

## Options for Closing the Gap on Forestry Management Measures

### January 2015

#### Background/Context

Additional progress is needed in Oregon on the additional management measures for forestry that are necessary to achieve and maintain water quality standards and designated uses. The following describes how Oregon may choose to proceed to adopt additional protective forestry measures to satisfy the CZARA additional management measures for forestry and help with coho recovery.

#### General CZARA Guidelines for Approval

There are two pathways for states to achieve an approvable program: 1) *regulatory program*; **OR** 2) *voluntary approach*. A voluntary approach requires that the State provide the following:

- a description of the voluntary programs, including the methods for tracking and evaluating those programs, that Oregon will use to encourage implementation of the management measures;
- a legal opinion from the attorney general or an attorney representing the agency with jurisdiction for enforcement that such authorities can be used to prevent nonpoint pollution and require management measure implementation, as necessary; and
- a description of the mechanism or process that links the implementing agency with the enforcement agency and a commitment to use the existing authorities where necessary, that could be relied upon notwithstanding the statutory “BMP safe harbor” provision in the Forest Practices Act.

#### Reasonable Options for Oregon to Satisfy the CZARA Additional Management Measures for Forestry and Help with Coho Recovery

- **Riparian Buffers**
  - **Medium and Small-Fish Bearing Streams: State currently pursuing regulatory program**
    - Current Deficiencies/Shortfall: Inadequate riparian protections for small and medium fish-bearing streams. Does not ensure forest operations meet the State water quality standards for protecting cold water in small and medium fish bearing streams. Inadequate riparian buffers are limiting coho recovery.
    - Examples of State Actions Needed: 1) Complete riparian rule by end of 2015; 2) Rule should cover medium and small-fish bearing streams; and 3) Rule should provide protective no cut buffers with a wider riparian

management zone either consistent with National Marine Fisheries (NMFS) science or equivalent to WA's or CA's approach.

- **Small, Non-fish bearing streams: State not currently pursuing a regulatory program; voluntary approach would need to address the following**
  - Current Deficiencies/Shortfall: Inadequate riparian protections for small non-fish bearing streams (retention of small understory within 10 feet of perennial Type N streams). Does not ensure forest operations meet the State water quality standards for protecting cold water criterion. Inadequate protections are limiting coho recovery.
  - Examples of State Actions Needed: 1) Adequate no-cut buffer with a wider riparian management zone either consistent with National Marine Fisheries (NMFS) science or equivalent to WA's or CA's approach; 2) Meet other elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>).
- **Roads: regulatory and/or voluntary approaches would need to address the following**
  - Current Deficiencies/Shortfall:
    - *Regulatory* - Recent rule changes and new policies do not sufficiently address water quality impairments associated with "legacy" roads, i.e. roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage, or impairments associated with the portion of the existing network where construction or reconstruction is not proposed.
    - *Voluntary* - ODF voluntary program does not adequately address legacy roads, nor has the state satisfied all elements needed for a voluntary program (see above).
  - Examples of State Actions Needed: 1) Establish regulations and or policies that specifically address legacy roads and roads that do not meet current State requirements with respect to siting, construction, maintenance and road drainage, or impairments associated with the portion of the existing network where construction or reconstruction is not proposed. 2) Use voluntary approach that includes establishing a road survey or inventory program that considers both active, inactive, and legacy roads that have the potential to deliver sediment to streams.; 3) Develop ranking system to establish priorities for road repair or decommissioning (The State currently has a protocol for this based on identification of 11 risks that the roads may pose to salmonid habitat.); 4) Develop a timeline for addressing priority road issues including retiring or restoring forest

roads that impair water quality; 5) Develop a reporting and tracking component to assess progress for remediating identified forest road problem.

*For a sufficient voluntary approach, 2-5 are needed as a package. The state must also meet other elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>)).*

- **Landslides: regulatory and/or voluntary approaches that could be established would need to address the following**

- Current Deficiencies/Shortfall: Oregon does not have additional management measures for forestry in place to protect high-risk landslide areas to ensure water quality standards and designated uses are protected.
- Examples of State Actions Needed: 1) Adopt similar harvest and road construction restrictions for all high-risk landslide prone areas with the potential to impact water quality and designated uses, not just those where landslides pose risks to life and property; 2) Voluntary programs to encourage and incentivize forestry BMPs to protect high-risk landslide areas that have the potential to impact water quality and designated uses and ensure that roads are designed to minimize slope failure risk. BMPs could include employing no-harvest restrictions around high-risk areas and ensuring that roads are designed, constructed, and maintained in such a manner that the risk of triggering slope failures is minimized; 3) Voluntary programs could also include a scientifically rigorous process for identifying high-risk areas and unstable slopes based on field review by trained staff. Widely available maps of high-risk landslide areas could improve water quality by informing foresters during harvest planning; 4) Integrate processes to identify high-risk landslide prone areas and specific best management practices to protect these areas into the TMDL development process. *For all voluntary programs, the state must meet all elements needed for voluntary program (see General CZARA Guidelines for Approval above or NOAA and EPA's 2001 memo on Enforceable Policies and Mechanisms for State Coastal Nonpoint Source Programs (<http://coast.noaa.gov/czm/pollutioncontrol/media/epmmemo.pdf>)).*

- **Spray Buffers for Aerial Application of Herbicides on Non-Fish Bearing Streams: regulatory and/or voluntary approach would need to address the following**

- Current Deficiencies/Deficiencies: No spray buffer to protect non-fish bearing streams during the aerial application of herbicides.
- Examples of State Actions Needed: 1) Adopt rules that would require spray buffers for the aerial application of herbicides along non-fish bearing streams. Oregon may wish to examine spray buffer requirements neighboring states have established for ideas; or 2) Adopt no-cut riparian buffers for timber harvest along non-fish bearing streams, which, by default, would also provide a buffer during

aerial spraying. Otherwise, the state may choose to pursue a voluntary approach by doing the following: 1) Expand guidelines for voluntary buffers or buffer protections for the aerial application of herbicides on non-fish bearing streams; 2) Educate and train aerial applicators of herbicides on the new guidance and how to minimize aerial drift to non-fish bearing streams; 3) Revise ODF Notification of Operation form required prior to chemical applications on forestlands to include a check box for aerial applicators to indicate they must adhere to FIFRA labels for all stream types, including non-fish bearing; 2); 4) Provide better maps of non-fish bearing streams and other sensitive sites and structures to increase awareness of these sensitive areas that need protection among the aerial applicator community; and 5) Encourage the use of GPS technology, linked to maps of non-fish bearing streams, to automatically shut off nozzles before crossing non-fish bearing streams.

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**Ex. 5 - Attorney Client**

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**Comment [AC2]:** Note: Revised for consistency with lang. in last draft of pesticides section I saw but I believe there may be a newer version, so Jenny, please confirm this still aligns with latest draft.

aerial spraying. Otherwise, the state may choose to pursue a voluntary approach by doing the following: 1) Expand guidelines for voluntary buffers or buffer protections for the aerial application of herbicides on non-fish bearing streams; 2) Educate and train aerial applicators of herbicides on the new guidance and how to minimize aerial drift to non-fish bearing streams; 3) Revise ODF Notification of Operation form required prior to chemical applications on forestlands to include a check box for aerial applicators to indicate they must adhere to FIFRA labels for all stream types, including non-fish bearing; 2); 4) Provide better maps of non-fish bearing streams and other sensitive sites and structures to increase awareness of these sensitive areas that need protection among the aerial applicator community; and 5) Encourage the use of GPS technology, linked to maps of non-fish bearing streams, to automatically shut off nozzles before crossing non-fish bearing streams.

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**Comment [AC3]:** I'm still unsure how this would be beyond the BMPs the guidance already includes. Tech Team is still resolving this issue and how/if this should be stated. May be premature to include bullet on guideline revisions in this draft to the state unless Jenny or others can clarify.

**Comment [AC4]:** See revised Option 1 for voluntary approach but this has not been resolved yet in tech team.